

**Special Meeting Minutes
Open and Executive Session
Friday, December 05, 2008
Meeting Scheduled Start Time: 12:00 PM**

**BOARD OF SUPERVISORS
Maricopa County, Arizona
(and the Boards of Directors of the Flood Control
District, Library District, Stadium District, Improvement
Districts, and/or Board of Deposit)**



"The mission of Maricopa County is to provide regional leadership and fiscally responsible, necessary public services to its residents so they can enjoy living in healthy and safe communities"

Board Members

Andrew Kunasek, District 3, Chairman
Max Wilson, District 4, Vice Chairman
Fulton Brock, District 1
Don Stapley, District 2
Mary Rose Wilcox, District 5

County Manager

David Smith

Clerk of the Board

Fran McCarroll

Meeting Location

Sullivan Conference Room
301 W. Jefferson, 10th Floor
Phoenix, AZ 85003

BOARD OF SUPERVISORS

The Board of Supervisors of Maricopa County Arizona convened in Special Session at 12:55 PM on Friday, December 05, 2008, in the Sullivan Conference Room with the following members present: Andrew Kunasek, Chairman, District 3; Fulton Brock, Supervisor District 1; Max Wilson, Supervisor, District 4. Absent: Don Stapley, Supervisor, District 2; Mary Rose Wilcox, Supervisor, District 5. Also present: Lori Pacini, Deputy Clerk of the Board; and Sandi Wilson, Deputy County Manager.

Prior to the start of the Special Meeting, Supervisor Stapley stated he was not sure whether he had a conflict of interest regarding the items listed on the agenda; however, he felt he should err on the side of conservative and recuse himself from both the executive session item and the open session item.

~Supervisor Stapley left and did not return~

Chairman Kunasek asked if Special Assistant County Attorney Barnett Lotstein would clarify whether the County Attorney could represent the Board of Supervisors without a conflict of interest and address the lack of confidence the Board has with the County Attorney's ability to represent the Board.

Special Assistant County Attorney Barnett Lotstein stated this issue was determined by the Supreme Court in *Mecham v. Corbin* when Mecham went to the Supreme Court in an attempt to remove the Attorney General from the constitutional duty of investigating crimes and prosecution with regard to that office. Mr. Lotstein stated first, the Supreme Court ruled allegations of personal ambition or animosity cannot disqualify the Attorney General from its duty. Second, the Attorney General is not the attorney for the Governor; but rather the attorney for the people and for the state. In addition, Mr. Lotstein stated the Supreme Court ruled the Attorney General does not represent the Governor when the Governor is not performing official duties.

Mr. Lotstein stated the point is clear there is not a conflict even if the County Attorney is prosecuting a member of the body. He added this is not an impediment to the County Attorney functioning in its duty. Finally, Mr. Lotstein stated it was the

conclusion of the County Attorney's Office if the Board of Supervisors went into Executive Session, it would be considered an illegal act.

Chairman Kunasek stated this response did not alleviate his concerns that the Board of Supervisors was under siege by the County Attorney's Office and asked Mr. Lotstein how he would advise him to proceed on legal options.

Mr. Lotstein stated the Board was not under siege and he took exception to that statement. He said each case rises on its own merits or facts and he could not generalize. Based on the individual merits of each case, the County Attorney's Office may assign outside counsel.

Supervisor Wilson stated he felt the Board of Supervisors needed someone who could give the Board legal advice.

Mr. Lotstein responded there was no conflict of advice. He stated the criminal charges are a single action against one member of the Board. The Board of Supervisors should not be concerned; but rather a judge and jury will decide the outcome of the case.

Supervisor Wilson stated he had concerns because the County Attorney has never contacted the Board members, has never come to a Board meeting and he would like some re-assurances.

Mr. Lotstein reiterated he was here to talk about the legality of holding an executive session and to address the conflict of interest issue. He continued by stating he was not aware of any situation where the County Attorney's Office had provided biased advice.

Chairman Kunasek responded by stating the items on the agenda had nothing to do with Supervisor Stapley; but rather the lack of confidence with the County Attorney. He went on to state he hoped the relationship could recover in the future. Chairman Kunasek then asked if this was a private practice, where he was paying \$400 per hour for legal advice and he had these concerns, how a private attorney would respond.

Bruce White, Deputy County Attorney stated an attorney in private practice is in a different situation. In a private party situation, the attorney and client can agree to part ways. However, statute does not give the Board and County Attorney that luxury.

Supervisor Brock stated he needed a sense of understanding that there is some level of comfort in conflict matters. He continued by asking how the Board could go about getting a second opinion on what the procedures should be.

Mr. Lotstein stated the County Attorney represents the Board of Supervisors and the people and have different sets of obligations. This representation is constitutionally mandated and the Board does not have any right to seek advice from outside counsel.

Supervisor Brock responded by stating there is always a question of checks and balances and the Board is trying to get an objective opinion; a second opinion.

Mr. Lotstein responded the issue is not getting a second opinion; it's a question of whether the Board has the right to get a legal opinion outside the County Attorney. Mr. Lotstein reiterated the Board does not have the right to seek legal opinions.

Chairman Kunasek stated they wanted assurances because of the potential for a conflict and whether the legal advice received by the County Attorney's Office was in the best interest of the Board.

Mr. Lotstein expressed he took exception to these comments because the County Attorney's Office does have the best interest of the Board. He stated he could not alleviate their concerns. He stated these were not his opinions but rather the opinion of the Supreme Court.

1. EXECUTIVE SESSION

Vote to convene in Executive Session to consider the items on the Special Executive Agenda dated December 5, 2008, pursuant to the statutory authority listed for each item.

~ The Board did not convene in Executive Session~

2. APPOINTMENT OF SPECIAL BOARD COUNSEL

Appoint Shughart, Thomson & Kilroy, PC as Special Counsel to the Board of Supervisors pursuant to the Contract for Specialty Legal Services Providers – Board of Supervisors (NIGP 96149) for the prosecution and defense of all actions to which the County is a party, for the filing of any actions necessary as a result of any conflict with the County Attorney, and to obtain all necessary legal advice required by the Board of Supervisors and/or Maricopa County management. (C-06-09-215-7-00)

An amended motion was read by Paul Golab, outside counsel, as follows:

Appoint Shughart, Thomson & Kilroy, PC as Special Counsel to the Board of Supervisors pursuant to the Contract for Specialty Legal Services Providers – Board of Supervisors (NIGP 96149) – 0608-ROQ, for the filing of any actions necessary as a result of any conflict with the County Attorney, and to obtain all necessary legal advice relating to evaluating the conflict of interest required by the Board of Supervisors and/or Maricopa County management.

Motion to amend made by Supervisor Wilson.

Supervisor Brock stated he was not comfortable enough to second the motion. He stated he first wanted to investigate all steps the Board could take to get a second opinion.

Chairman Kunasek stated the motion died for lack of a second.

Paul Golab, outside counsel, advised the Chairman does have the option to second a motion.

Tom Irvine, outside counsel, stated in 2006 the County Attorney's office sued the Board because the Board felt if the County Attorney was incapable of acting in that role, the Board may hire outside counsel. He continued by stating the Attorney General recused himself from all civil side actions and only represented the Governor on criminal cases. He went on to explain the action before the Board, as amended, was limited to the ability to research whether there is a conflict and whether recusal is required.

Motion to amend by: Supervisor Wilson, Seconded by: Chairman Kunasek
Ayes: Kunasek, Wilson
Nays: Brock
Absent: Stapley, Wilcox

MEETING ADJOURNED

Following discussion on the above and there being no further business to come before the Board, the meeting was adjourned at 1:40 p.m.

ATTEST:

Andrew Kunasek, Chairman of the Board

Lori Pacini, Deputy Clerk of the Board